

(016) 445-6493

600.0017

July 18, 1984

Dear _____

Your letter of May 11, 1984, has been referred to me for response. You request our opinion as to the correct application of tax to the purchase of a floating dry dock by _____ from a foreign shipbuilder.

We understand that the floating dry dock, known as the _____, was built by _____ at its _____ shipyard and was delivered to _____ at _____ in November of 1983. The unit is 620 feet long and 171 feet wide, with an overall height of 67 feet, and is capable of lifting 25,000 tons. Apparently, the dry dock floats freely with the tide, and is not permanently affixed to the pier alongside which it is moored in _____. The unit is either pulled or pivoted out into the bay when ships are launched from building positions adjacent to where the dry dock is normally moored. _____ has reported to the Board a use tax measured by the \$11,699,437.50 cost of the dry dock.

In light of Revenue and Taxation Code Section 6356 and 6273, you question whether sales or use tax applies to _____ purchase of the floating dry dock. You point out that Section 6356 states that "...there are exempt from taxes imposed by this part the gross receipts from sales of more than 1000 tons burden..." and that both Section 6273 and Sales and Use Tax Regulation 1610 define the term "vessel" to mean "any boat, ship, barge, craft, or floating thing designed for navigation in the water."

In its entirety, Section 6356 provides that:

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"There are exempted from the taxes imposed by this part the gross receipts from sales of vessels of more than 1000 tons burden by the builders thereof and the storage, use, or other consumption in this State of any ship of more than 1000 tons burden which is purchased in this State from the builders and with respect to which the use tax would, if the ship had been purchased outside this State or in interstate commerce, be inoperative because prohibited under the Constitution or the laws of the United States or the Constitution of this State. (Emphasis added.)"

In our view, the _____ is tangible personal property which qualifies as a "vessel," as that term is used under both Sections 6356 and 6273. Nevertheless, it is our opinion that use tax properly applies to purchase of the vessel for use in California pursuant to Section 6201 of the Revenue and Taxation Code, notwithstanding the fact that an exemption from sales tax is provided under Section 6356. The portion of Section 6356 quoted in your letter provides an absolute exemption from sales tax for vessels of more than 1,000 tons sold by the builders thereof. Section 6356, however, does not exempt from the use tax _____ purchase of the floating dry dock for use in California. That part of Section 6356 which does grant a use tax exemption (portion of statute underlined above) is a conditional exemption which is inoperative and has no effect whatsoever under Sales and Use Tax Law, in that this state is not constitutionally prohibited from imposing a use tax on vessels purchased from out-of-state sellers when the vessel is purchased for use in California. (See In Re Los Angeles Lumber Products Co., Ltd., 45 Fed. Supp. 77.)

Pursuant to Section 6201, a use tax is imposed on the storage, use, or other consumption in this State of all tangible personal property purchased from any retailer for storage, use, or consumption in this state unless otherwise exempted from taxation. Although the use tax is complementary to the sales tax, it is a separate tax which applies to property purchased for use in this state, regardless of whether the retailer is located in this state, or in another state or foreign country, unless the gross receipts from the sale have been included in the measure of the sales tax, or unless the transaction is otherwise exempted from use tax either

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by statute, or by the U.S. or State Constitution. Therefore, it is our opinion that purchase of the vessel for use in California is subject to use tax, since use of this vessel is not otherwise exempted from taxation under either state or federal law.

If you have any further questions, please write this office.

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:dah

bcc: Don Hennessy